

# **Disclosure of Criminal Convictions During the Recruitment Process**

## **Managers Briefing**

### **Background**

Over recent years many organisations have moved away from the practice of asking for information on criminal convictions at the initial application stage with the drivers for this likely to have been two-fold.

The first relates to changes in data protection legislation requiring organisations to have a clear legal basis for processing data and to ensure that only the minimum information required is gathered and processed. Information on criminal convictions is particularly sensitive (known as Special Category data) and this duty therefore becomes all the more important. The second driver relates to a desire to avoid unfairly disadvantaging applicants who have historical convictions that are not directly relevant to the role they have applied for.

Following discussion at EMT it has therefore been agreed to change how the council asks applicants for information relating to criminal convictions.

### **Current Position**

The council currently has two different recruitment application forms; one for posts which involve regulated work and one for all other posts. In this context regulated work is defined by Disclosure Scotland and covers all posts working with children or vulnerable adults for which a Protecting Vulnerable Groups (PVG) or disclosure Scotland check would be required.

Where the post involves regulated work, applicants are asked to disclose any convictions, charges or cautions, spent or otherwise. Where the post does not include regulated work, candidates are asked to disclose any unspent convictions.

In the case of applications for regulated work, the successful candidate will also be required to apply for PVG scheme membership (or update if they are already a member) which will provide the council with information on any convictions or other relevant information such as cautions or charges.

### **Key Changes**

In order to ensure the council only processes the minimum personal data required to complete the recruitment process the new approach will be as follows

- All questions relating to criminal convictions, charges or cautions will be removed from all council application forms
- The preferred candidate(s) will be asked to complete a criminal conviction declaration form which will be emailed to them by HR Support along with their conditional offer of employment. The preferred candidate(s) will be required to complete and return this to the recruiting manager within 2 working days. Copies of the forms to be used for both regulated and non-regulated work are provided in Appendix 1.
- Where relevant convictions were disclosed by the preferred candidate the recruiting manager would be required to discuss this with the candidate and carry out a risk assessment to determine whether or not the conditional offer of employment should be withdrawn. Managers guidance has been produced to assist in assessing whether

or not a previous conviction impacts on a candidate's suitability for a role and this is attached as Appendix 2.

- For regulated work a PVG check must also be undertaken before any unconditional offer of employment is confirmed

**This approach will be applied to all positions advertised in Non-Teaching Bulletin 456 (publication date of 17<sup>th</sup> June) and Teaching Bulletin 166 (publication date of 15<sup>th</sup> June)**

### **Future Developments**

The council is also looking to create a list of non-regulated posts where it would be beneficial for a Basic Disclosure check to be obtained as part of the recruitment process. Basic Disclosure checks only provide information on unspent convictions and unlike with PVG checks, the council does not receive updated on charges or convictions that take place after the date the Basis Disclosure is carried out.

HR will be in contact with services to determine where such disclosures would be appropriate.

**HR Services  
June 2022**

### DECLARATION OF CRIMINAL CONVICTIONS – NON-REGULATED WORK

We recognise the contribution that former or ex-offenders can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Any information given will be treated in the strictest confidence. Suitable applicants will not be refused posts because of offences which are not relevant to the role and which do not make them a risk in the role for which they are applying

All cases will be examined on an individual basis, taking the following into consideration:

- Whether the conviction is relevant to the position applied for.
- The seriousness of any offence revealed.
- The age of the applicant at the time of the offence(s).
- The length of time since the offence(s) occurred.
- Whether the applicant has a pattern of offending behaviour.
- The circumstances surrounding the offence(s), and the explanation(s) offered by the person concerned.
- Whether the applicant's circumstances have changed since the offending behaviour.

Due to the nature of the role you have applied for you are required to declare any **unspent** criminal convictions. A conviction becomes spent, and a person treated as a protected person in respect of that conviction, on the expiry of the disclosure period applicable to the conviction. Section 6 of the 1974 Act sets out the rules which determine the length of the disclosure period of a conviction. The disclosure period applicable to a conviction depends principally on the disclosure period applicable to the sentence imposed for that conviction. However, the rules as to when a conviction becomes spent get more complicated when more than one sentence is imposed for a conviction or if a person is convicted of further offences before their existing convictions are spent. Further details on when convictions become spent can be found on the Scottish Government website at <https://www.gov.scot/publications/guidance-self-disclosure-previous-convictions-alternatives-prosecution-scotland-under-rehabilitation-offenders-act-1974/pages/4/>

If you have any unspent criminal convictions you must provide details of the offence, date it was committed and sentence given below

Offence	Date Offence Committed	Sentence/Disposal

**DECLARATION**

- I have read the advisory note above
- I have not withheld any information which may affect my application for employment.
- I understand that false information or omissions may lead to my dismissal.

Signature.....

Date.....

This form must be returned to [recruitment@westlothian.gov.uk](mailto:recruitment@westlothian.gov.uk) within 2 working days of receipt of your conditional offer of employment. Failure to do so may result in an offer being withdrawn

### **DECLARATION OF CRIMINAL CONVICTIONS – REGULATED WORK**

We recognise the contribution that former or ex-offenders can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Any information given will be treated in the strictest confidence. Suitable applicants will not be refused posts because of offences which are not relevant to the role and which do not make them a risk in the role for which they are applying

All cases will be examined on an individual basis, taking the following into consideration:

- Whether the conviction is relevant to the position applied for.
- The seriousness of any offence revealed.
- The age of the applicant at the time of the offence(s).
- The length of time since the offence(s) occurred.
- Whether the applicant has a pattern of offending behaviour.
- The circumstances surrounding the offence(s), and the explanation(s) offered by the person concerned.
- Whether the applicant's circumstances have changed since the offending behaviour.

As this post involves regulated work you are required to disclose any criminal convictions, pending convictions, charges or police cautions which are not considered as 'spent' in terms of the rehabilitation of Offenders Act 1974. A conviction becomes spent, and a person treated as a protected person in respect of that conviction, on the expiry of the disclosure period applicable to the conviction. Section 6 of the 1974 Act sets out the rules which determine the length of the disclosure period of a conviction. The disclosure period applicable to a conviction depends principally on the disclosure period applicable to the sentence imposed for that conviction. However, the rules as to when a conviction becomes spent get more complicated when more than one sentence is imposed for a conviction or if a person is convicted of further offences before their existing convictions are spent. Further details on when convictions become spent can be found on the Scottish Government website at <https://www.gov.scot/publications/guidance-self-disclosure-previous-convictions-alternatives-prosecution-scotland-under-rehabilitation-offenders-act-1974/pages/4/>

If you have any unspent criminal convictions, charges or cautions you must provide details of the offence, date it was committed and sentence given below

<b>Offence</b>	<b>Date Offence Committed</b>	<b>Sentence/Disposal</b>

In addition, you are also required to declare any spent convictions, charges or cautions listed under 'Offences which must always be disclosed'. Full details on the offences which need to be declared under this heading can be found on the Scottish Government website at <https://www.mygov.scot/offences-always-disclosed/>

If you have any convictions, charges or cautions which fall under this heading you must provide details of the offence, date it was committed and sentence given below

Offence	Date Offence Committed	Sentence/Disposal

Have you ever been the subject of police investigation or disciplinary action by a professional or regulated body? If so please supply details:

**DECLARATION**

- I have read the advisory note above
- I have not withheld any information which may affect my application for employment.
- I understand that false information or omissions may lead to my dismissal.

Signature.....

Date.....

This form must be returned to [recruitment@westlothian.gov.uk](mailto:recruitment@westlothian.gov.uk) within 2 working days of receipt of your conditional offer of employment. Failure to do so may result in an offer being withdrawn

## **Appendix 2 – Managers Guidance**

### **Consideration of Criminal Convictions during the Recruitment Process**

#### **Managers Guidance**

As part of the recruitment process all successful candidates will be asked to complete and return a criminal conviction declaration. This form must be completed and reviewed prior to an unconditional offer of appointment being made. The precise nature of the questions asked on the declaration form will vary depending on whether the candidate has applied for regulated or non-regulated work. Copies of these forms can be found in Appendix 1 but the key difference is that candidates for non-regulated work will only be asked to declare any unspent criminal convictions.

In all cases where a candidate discloses previous criminal convictions, this information must be considered carefully by the recruiting manager, with an emphasis on assessing the relevance of the conviction to the post that has been applied for.

When considering the relevance of a previous conviction the following factors should be considered

#### **1. The central concern**

The first stage in determining how to proceed in relation to information on criminal convictions is by identifying if there is a “central concern”. In other words, what it is you are concerned the individual may do and why it is that you are concerned about this. When asking this question ensure that your focus is on how the conviction relates to the post the individual has applied for and not more general assumptions on what the conviction may or may not say about their character.

An example may be someone who has applied for a role as a support worker working with vulnerable clients in their own homes who declares a previous conviction for theft. In this case the central concern would be that they have committed theft in the past and therefore may steal from the homes of the vulnerable clients they would be working with.

Another example could be someone who has applied for a role as a road worker who declares a previous conviction for breach of the peace. In this case the central concern would be that the individual may behave inappropriately to members of the public they encounter in the course of their employment.

It should be noted that the examples given above are general examples and the concerns and/or appropriate action should be based on the particular circumstances of each individual.

#### **2. Anticipated impact within employment**

Where a central concern is identified the next stage is to consider how likely it is that the job the person has applied for will present an opportunity for them to repeat past behaviour. In assessing this you should consider how the behaviours you are concerned about (the central concern identified above) could affect the person carrying out their role. There are a number of things that should be considered when assessing this including

- The exact nature of the offence and the level of harm caused to others
- The length of time that has passed since the offence was committed
- The age of the individual at the time the offence was committed
- Whether there has been a pattern of repeated offending
- Whether the behaviour was specific to circumstances that do not occur in the course of the job, for example a driving offence where the post does not involve driving

In some cases, consideration of the central concern alongside anticipated impact within employment will be sufficient to allow a recruiting manager to decide to proceed with the appointment without the need to have any further discussion with the candidate. In these circumstances the criminal conviction declaration form should be securely destroyed and the offer of appointment progressed in the normal manner.

Where it is not possible to decide to proceed with an appointment on the basis of the information available, the recruiting manager should arrange to meet the candidate to discuss further, this is known as the “central conversation”

### **3. Central Conversation**

In many cases the central conversation will be key to allowing a recruiting manager to determine whether or not it is appropriate to proceed with an offer of employment. This conversation is the chance to understand more detail around the nature of the offence itself and the individual’s circumstances at the time.

When conducting the central conversation, the focus should always be on assessing how the conviction(s) relate to the role the individual has applied for.

Where the central conversation leads to the conclusion that the risk of appointing the individual is sufficiently low, the criminal conviction declaration form and any supporting notes taken by the recruiting manager should be returned to Recruitment and the offer of employment processed in the normal manner.

Where the central conversation leads to the conclusion that the risk of appointing the individual is too high the recruiting manager should inform the candidate of this. They should also notify the recruitment team who will issue formal notification to the candidate that the offer has been withdrawn. All paperwork relating to the appointment should be retained for a 6-month period and then securely destroyed.

Where recruiting managers require additional advice or support in the assessment of information disclosed as part of this process they should contact the Senior HR Adviser for their area.

**HR Services  
June 2022**